

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1848 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

DIST PANCHAYAT

Versus

HARISHBHAI MANGALBHAI PATEL

Appearance:

MR MUKESH R SHAH for Petitioners
NOTICE SERVED for Respondent No. 1
MR DILIP B RANA for Respondent No. 2, 3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 21/12/2000

ORAL JUDGEMENT

The District Panchayat and the District Primary
Education Committee - petitioners have filed this
revision application against judgement and order dated
8.10.1999 passed by the learned Jt. District Judge,

Panchmahals at Godhra in Misc. Civil Appeal No. 158 of 1999. The learned Judge was pleased to confirm the order passed below Exh. 5 dated 23.9.1999 passed by the learned In-Charge Jt. Civil Judge (J.D.), Godhra, in Regular Civil Suit No. 354 of 1999.

2. The facts giving rise to this petition are as under:

2.1 The petitioners invited applications by giving advertisement in local newspaper Sandesh dated 30.4.1999 for the post of Vidya Sahayak in Panchmahals District and 39 seats of Vidya Sahayak were reserved for the candidates who have passed C.P. Ed. Examination and S.S.C. As per the said advertisement, a candidate must have completed 18 years of age as on date on which advertisement was published and another condition along with the other conditions was that the candidate must have passed SSC/PTC examination, SSC/CP. Ed. Examination, SSC/ATD Examination. It was submitted that the candidates must submit all the original certificates of requisite qualification along with the application and the candidate was also required to submit trial certificate issued by the institution from which the candidate has passed examination. It was further stated in the said advertisement that if any of the conditions are not fulfilled the application of the candidate should be treated as cancelled and will not be considered on merits.

2.2 Harishkumar Mangalsinh Patel and others opponents (original plaintiffs) filed applications for the post of Vidya Sahayak. However, the result was not declared at all at the time when the applications were invited i.e. the date on which the advertisement was published on 30.4.1999 and therefore the plaintiff did not produce any original certificate with regard to passing of the examination in C.P. Ed. course. However, without producing certificate- marksheet of C.P. Ed. course and the trial certificate the original plaintiffs had made applications on 9.5.1999 and 8.5.1999 respectively. It was stated that the plaintiffs did not fulfill the qualification as prescribed by the advertisement.

2.3 In view of the apprehension that the plaintiff's application will be rejected, the plaintiff filed Regular Civil Suit No. 354 of 1999 in the court of the learned Judge (S.D.), Panchmahals at Godhra for a declaration of permanent injunction and for a declaration directing the petitioners-org. defendants to call the plaintiff for interview for the post of Vidya Sahayak and to consider

her case on merits along with other candidates. The original plaintiffs also prayed for permanent injunction that till the application of the plaintiff is considered, not to fill up the post of Vid Sahayak of the candidates who have passed C.P. Ed. examination. In the said suit the plaintiff also prayed for interim injunction application Exh. 5 under Order 39 Rule 1(2) and Section 151 of the C.P.C. and prayed for interim relief which was the main prayer directing the petitioners to issue interview call to the plaintiff-opponents and to take interview and consider her case. The plaintiffs have prayed for mandatory interim relief. The plaintiffs submitted applications and produced certificate which was subsequently issued.

2.4 The defendant petitioners filed written statement and written reply to Exh. 5 application denying the allegations levelled in the application below Exh. 5. It was contended on behalf of the defendants that as the conditions of the advertisement have not been fulfilled and the plaintiffs are not found qualified till date on which their cases are considered, plaintiffs' case is not considered on merits and the applications of the plaintiffs are required to be rejected outrightly. It was contended by the petitioners that interim relief cannot be granted as otherwise it would be allowing the suit without deciding the question finally.

3. The learned Civil Judge (J.D.) Godhra by his order dated 23.9.1999 has allowed the application Exh. 5 directing the petitioners to issue interview calls to the plaintiff to be held by them from 27.9.1999 to 1.10.1999.

4. Being aggrieved and dissatisfied with the aforesaid order, the petitioners filed Civil Miscellaneous Appeal No. 158 of 1999 in the Court of learned District Judge, Godhra which came up for hearing before the learned Joint. District Judge, Godhra. The learned Joint by his judgement and order dated 8.10.1999 dismissed the appeal preferred by the petitioners and confirmed the order passed by the trial court.

5. Being aggrieved and dissatisfied with the aforesaid judgement and order of the learned Joint District Judge, the petitioners preferred this Civil Revision Application before this Court somewhere in December, 1999.

6. The learned counsel for the petitioners Mr. R. N. Shah contended that the orders of the courts below are contrary to and inconsistent with the judgement in

the case of ASHOK KUMAR SHARMA & OTHERS VS. CHANDER SHEKHAR & ANOTHER reported in JT 1997(4) S.C. 99 in which at para 6 on page 103 the Hon'ble Supreme Court observed as under:

"The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all."

He has also relied on the judgement of this court in Special Civil Application No. 5244 of 2000 decided on 16.6.2000 (Coram: R.M. Doshit, J). In this case the Court has observed in para 4 thus:-

"I am unable to agree with the contention raised by Mr. Thakkar. The advertisement categorically states that every candidate is required to annex all the original certificates which the petitioner was unable to do. Her candidature, therefore, has rightly been rejected. Further, there was no stipulation in the advertisement that the persons awaiting result of the qualifying examination (i.e. PTC) may also apply and in such cases, the original certificates may be submitted latter as and when the same are issued. The petition is, therefore, dismissed."

6.1 In view of the above factual and legal position, the revision application is allowed. Both the orders of the courts below dated 8.10.1999 and 23.9.1999 passed by the Joint District Judge and the trial court respectively are quashed and set aside. Rule is made absolute. No order as to costs.

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